

IN THE MATTER OF: )  
 )  
Magnolia Sanitary Landfill )  
Air Facility ID No. – 501-0033 ) **CONSENT ORDER NO. \_\_\_\_-\_\_\_\_-CAP**  
Summerdale, Baldwin County, Alabama )  
 )

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) and the Magnolia Sanitary Landfill (hereinafter, “Magnolia”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

1. Magnolia operates a Municipal Solid Waste Landfill located at 15140 County Road 49 in Summerdale, Baldwin County, Alabama.
2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §§22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On October 4, 2005, the Department issued Major Source Operating Permit (hereinafter, the “Permit”) 501-0033 to Magnolia.

5. General Permit Proviso 12 states: “A compliance certification shall be submitted annually within sixty days of the anniversary date of issuance of this permit.”

6. ADEM Admin. Code r. 335-3-10-.02(75) incorporates by reference the requirements of the New Source Performance Standard for Municipal Waste Landfills (hereinafter, “NSPS”), 40 CFR Part 60, Subpart WWW, which are applicable to Magnolia.

7. Unit Specific Permit Proviso 4 of the Recordkeeping and Reporting Requirements section requires Magnolia to maintain all records set forth in the NSPS at 40 CFR § 60.758. Specifically, the NSPS at 40 CFR § 60.758(b)(4), requires Magnolia to keep records of continuous presence of a flame on the flare. For the period of June 29, 2009 through July 12, 2009, a period of thirteen days, Magnolia failed to maintain these records as required by the NSPS. Additionally, Magnolia failed to provide notification of this deviation to the Department within forty-eight hours or two working days, in violation of General Permit Proviso 21 (b).

8. Magnolia was required to submit to the Department an Annual Compliance Certification (hereinafter, “ACC”) for the period of October 4, 2008 through October 3, 2009, by December 4, 2009. An incomplete ACC was received by the Department on January 5, 2010 and later, a complete, but inaccurate ACC was received by the Department on February 9, 2010.

9. The Department considered the ACC to be inaccurate because it certified that Magnolia was in compliance with all permitted and regulatory requirements for the previous year. The following violations should have been noted on Magnolia's ACC:

- a. Magnolia did not submit the previous ACC in a timely manner.
- b. Magnolia did not perform required NSPS testing in a timely manner.
- c. Magnolia failed to properly maintain records as required by the NSPS.
- d. Magnolia did not report the recordkeeping deviations in a timely manner.

10. The Department issued Consent Order No. 09-095-CAP on August 18, 2009 to Magnolia for the violations cited in Finding No. 9 above. Consent Order No. 09-095-CAP required Magnolia to comply with all requirements of the Permit, all other ADEM Air permits, and the ADEM Admin. Code. Thus, the violations cited in this Consent Order also violate the terms and conditions of Consent Order No. 09-095-CAP.

11. The Department issued Consent Order No. 06-001-CAP on October 3, 2005 to Magnolia for failure to submit two consecutive ACCs in a correct/ timely manner. Consent Order No. 06-001-CAP required Magnolia to comply with all requirements of the Permit, all ADEM Air permits, and ADEM Admin. Code. The violations cited in this Consent Order also violate the terms and conditions of Consent Order No. 06-001-CAP.

12. Magnolia consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

13. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

14. Magnolia has agreed to the terms of this Consent Order in an effort to resolve the alleged violations herein without the unwarranted expenditure of its funds in further defending the above alleged violations. Magnolia neither admits nor denies the Department's allegations embodied in this Consent Order.

### ***CONTENTIONS***

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100.00) or exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The failure to submit an ACC in a timely manner is considered a serious violation. The failure to keep records of

continuous presence of a flame and to report deviations within 48 hours or 2 working days are both considered serious violations. The submittal of an inaccurate ACC is considered a serious violation.

B. THE STANDARD OF CARE: The Department considers Magnolia to have demonstrated an insufficient standard of care by failing to submit the ACC in a timely manner, failing to keep records of continuous presence of a flame, and failing to report this deviation within the required time frame. The Department considers Magnolia to have demonstrated a low standard of care by submitting an inaccurate ACC.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: There is no evidence that Magnolia gained any significant economic benefit from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There is no evidence that the violations cited in this Order resulted in any harm to the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Magnolia Notices of Violation (NOVs), dated April 30, 2004 and January 11, 2005, and Consent Order No. 06-001-CAP on October 3, 2005, for failure to submit two consecutive ACCs correctly and/or by their due dates. The Department issued Magnolia a NOV on January 14, 2009 and Consent Order No. 09-095-CAP for failure to submit the ACC in a timely/correct manner, failure to complete the gas collection and control device initial performance test, and failure to submit the initial NSPS Subpart WWW report by the required due dates.

F. THE ABILITY TO PAY: Magnolia has not alleged an inability to pay the civil penalty.

## ***ORDER***

THEREFORE, Magnolia, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Magnolia agree to enter into this ORDER with the following terms and conditions:

A. Magnolia agrees to pay to the Department a civil penalty in the amount of \$30,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Magnolia agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Magnolia agrees to take the necessary action to come into compliance with all applicable regulations, including permitting requirements.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by

the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. Magnolia agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Magnolia agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Magnolia also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Magnolia shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Magnolia, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Magnolia) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each

extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Magnolia, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Magnolia agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning Magnolia which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Facility shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Magnolia agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Magnolia does hereby waive any hearing on the terms and conditions of same.

J. The Department and Magnolia agree that this Order shall not affect its obligation to comply with any Federal, State, or local laws or regulations.



K. The Department and Magnolia agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Magnolia agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and Magnolia agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and Magnolia agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Magnolia of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MAGNOLIA SANITARY LANDFILL

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
John P. Hagood  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Date Executed)